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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 1184

NORMAN BENNETT,

Petitioner,

v.

FORD MOTOR COMPANY,

Respondent.

PETITION FOR REHEARING

ALBERT BRICK
SAMUEL INTRATER
1010 Vermont Avenue, N. W.
Washington, D. C. 20005
Attorneys for Petitioner

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PETITION FOR REHEARING

Comes now the petitioner and respectfully requests a re-hearing in this cause, and as grounds therefore respectfully states as follows:

I.

Failure to grant certiorari herein will set up a precedent which can result in the filing of a multiplicity of spurious law suits by parties, who merely wish to gain access to confidential records of other citizens.

II.

Since the filing of the original briefs herein, petitioner has received documentary evidence of misrepresentations in Respondent's Brief.

III.

The holding of the trial court was transcribed and as such is an official part of this case and grounds for a precedent in future cases. This Court did not have such transcript before it when it ruled on the petition herein.

ARGUMENT

I.

This is an action in which respondent - defendant to a law suit by petitioner - obtained access to confidential records of petitioner. This was done without any court order, without authority, and in violation of Federal statute.

If the ruling herein is allowed to stand, it is a precedent which will stimulate the filing of spurious lawsuits by any unscrupulous party who wishes to gain access to the confidential records of another.

II.

In its brief, respondent made numerous allegations which petitioner contends are without foundation (see affidavit attached hereto). As an example, respondent stated on page 8 of its brief that petitioner had made efforts to have the American Legion file a brief amicus curiae in the Court of Appeals. The letter and resolution attached hereto as Exhibit A, and received by petitioner after the filing of briefs,

shows that such allegation of respondent is without foundation.

This is merely an example of numerous misrepresentations and misleading allegations of respondent.

Thus, also on page 8 of its brief, respondent alleged that it was authorized to inspect petitioner's records since the Navy Regulations made such available "to persons properly and directly concerned." This quotation was taken out of context, and eliminated the important qualifying words "including the serviceman himself and personal representatives of the serviceman, e.g., executors, guardians, etc. who present proper proof."

Other misrepresentations and misleading statements are set forth in the affidavit attached hereto.

III.

Petitioner is informed that this Court did not consider the transcript of the ruling of the District Court. Since this transcript contains the law as handed down by such Court and creates a precedent for future cases, it is important for this Court to reexamine this matter with such transcript before it.

Petitioner therefore prays for a rehearing in the above-entitled matter.

ALBERT BRICK
SAMUEL INTRATER
1010 Vermont Avenue, N. W.
Washington, D. C. 20005
Attorneys for Petitioner

CERTIFICATE

I hereby certify that this petition is presented in good faith and not for purposes of delay and that such petition is restricted to intervening circumstances of substantial effect and to grounds not previously presented.

Samuel Intrater
Attorney for Petitioner

Copy of the foregoing petition mailed this ____ day of June, 1966, to Steptoe & Johnson, Shoreham Building, Washington, D.C., attorneys for respondent.

Samuel Intrater

APPENDIX A

THE AMERICAN LEGION
DEPARTMENT OF THE DISTRICT OF COLUMBIA

1417 K STREET, NORTHWEST
WASHINGTON, D. C. 20005
Metropolitan 8-2736

RICHARD R. GIASSON
DEPARTMENT COMMANDER

VICE COMMANDERS
W. DONALD CALOMIRIS
FRANCIS J. DONNELLY
ROBERT G. ROSENBERG
CARLOS ROSARIO
CHARLES H. CROSS

H. VICTOR CONWELL
DEPARTMENT ADJUTANT
FRANK E. ALDRIDGE
DEPARTMENT FINANCE OFFICER
ALLYN C. DONALDSON
NATIONAL EXECUTIVE COMMITTEEMAN
FRANK J. SPECHT
ALTERNATE
NATIONAL EXECUTIVE COMMITTEEMAN

May 18, 1966

Mr. Norman Bennett
U. S. Merchandise Mart Inc.
4600 Wisconsin Avenue, N.W.
Washington, D.C. 20016

Dear Commander Bennett:

At the monthly Executive Committee Meeting of the Department of the District of Columbia, The American Legion, on April 28, 1966, the attached resolution -- "Protecting Privacy of Veterans' Personnel Files and Records" -- was discussed and unanimously passed.

This is the first time that this resolution has been brought up before the Department Executive Committee, according to my knowledge.

Very truly yours,

Frank J. Specht
Chairman
Resolutions Subcommittee

FJS:bjr
Enc. 1

RESOLUTION

American Legion Post No. 10
Department of the District of Columbia

Whereas, the privacy of personnel files of all veterans are protected and governed by Federal regulations; and

Whereas, the Fourth Amendment to the U.S. Constitution guarantees citizens against unreasonable searches and seizures; and

Whereas, a recent 2 to 1 decision of the U.S. Court of Appeals for the District of Columbia has upheld a ruling of a lower court in the case of a veteran (Civil Action 2520-64, Bennett vs. Ford Motor Company) in the U.S. District Court for the District of Columbia; and

Whereas, the above ruling (REF. ACTION NO. 19370) is alleged to be detrimental to every veteran in that it allows any party who is engaged in such litigation to have full access to the veteran's Personnel Records; and

Whereas, such access may allegedly be used to gather information by another party to be used in any manner detrimental to the Veteran and in violation of his U.S. Constitutional rights; and

Whereas, such records of Veterans may contain classified information which should not be made available to persons outside the Military Establishment; and

Whereas, the aforementioned ruling of the U.S. Court of Appeals allegedly does establish this case as a precedent that can compromise existing protection for personnel records afforded by the U.S. Code of Federal Regulations Sec. 701.

NOW, THEREFORE, BE IT RESOLVED:

FIRST: That the American Legion declare its support for strict enforcement of all existing Federal Regulations and Constitutional rights regarding the privacy of Veterans' personnel files and records.

SECOND: The American Legion take any necessary action to safeguard the security and privacy of Veterans' Personnel Files and Records as provided for by Federal Regulations, in the event of a breach thereof.

THIRD: That a copy of this resolution be forwarded to the National Headquarters of The American Legion with the request that it be referred to The National Judge Advocate for review of the record and ruling in the case of Bennett v. Ford Motor Company, APPEAL NO. 19370 and if, in his opinion, the American Legion should file a brief as Amicus Curiae in the Supreme Court in said case, that he then take action forthwith.

The foregoing Resolution was adopted by the National Cathedral Post No. 10, Department of the District of Columbia, The American Legion, at a regular meeting March 30, 1966, with the Resolve, that the same be presented to the Department of the District of Columbia, American Legion, for appropriate action.

A true copy:

John Cornell Adj.

Norman Bennett

Commander, National Cathedral Post No. 10
Department of the District of Columbia

AFFIDAVIT OF PETITIONER

This affidavit is respectfully submitted because this case has heretofore been judged on the basis of unsupported allegations of the defendant and not true facts that are substantiated by valid, authoritative documented evidence which the plaintiff has heretofore been prevented from presentation by the actions of the defendant.

I have obtained authoritative documented proof that the misrepresentations alleged by the Defendant regarding statement made by Plaintiff in reference to the actions of the American Legion, Department of District of Columbia, and its interests as pertains to the rights of all veterans in this case, are not true.

This fact is typical of the continuous distortions of truth, misstatements of facts and misrepresentations upon which the Defendant has relied to justify his actions and which the lower federal courts have denied me the opportunity to submit documented proof that would nullify and discredit the Defendant's allegations.

It has been the Defendant's avowed purpose from the outset to seek to impugn my credibility with complete disregard of my honorable retirement as an officer from the U.S. Navy, and my service and business reputation for which I have worked hard to achieve.

This fact has not only been so stated by the Defendant, but exemplified by his unwarranted and malicious accusations as to my alleged unethical filing of civil damage suits, based on selected information illegally obtained by Defendant from my Confidential Service Records in violation of the rights granted by the Fourth Amendment to the U. S. Constitution and the governing Federal Regulations. I

have been advised by a high echelon representative of the Judge Advocate General's office of the U. S. Navy that this manner of access is unprecedented.

The Defendant has made the following allegations which are either untrue, distortions of facts, or misleading.

1. The inspection of Records was pursuant to a valid, outstanding subpoena duces tecum; this is not true.
2. The records were relevant to petitioner's qualifications as expert witness; this is not true.
3. The Defendant complied with the terms of its own subpoena, letters of conditions to the Navy Department, and complied with existing Federal Regulations safeguarding subject records; this is not true.
4. That none of the information or documents were "actually" used in Patent Trial; this statement is superficial since it does not present all the facts.
5. That subject documents extracted from the records were "rather routine in nature"; this is not true.
6. The "only publication" of the subject documents was to "his own secretary" and the "official custodian"; this is not true.

All the above contentions of the Defendant can be disproved by valid, documented evidence.

Subscribed and sworn to
before me, a notary
public this _____ day of
_____, 1966.

_____
Norman Bennett